

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-20-COE-05
)	
KB Trading Inc.)	Proceeding Under Sections 113(a)(1)(3) and
)	114(a)(1) of the Clean Air Act, 42 U.S.C.
And)	§§ 7413(a)(1)(3) and 7414(a)(1)
)	
Butternut Auto and Recycling Inc.)	
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Administrative Consent Order

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to KB Trading, Inc., d/b/a Berea Metals & Recycling, and Butternut Auto and Recycling Inc. (herein collectively referred to as “you”) under Sections 113(a)(1)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emission reductions of ozone-depleting substances.

3. As specified at 40 C.F.R. § 82.150(a), the purpose of the regulations is to reduce emissions of class I and II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances.

4. 40 C.F.R. 82, Subpart F applies to persons disposing of appliances, including small appliances, motor vehicle air conditioners (MVACs), and MVAC-like appliances. *See* 40 C.F.R. § 82.150(b).

5. Under 40 C.F.R. § 82.152, a “person” means, among other things, any individual or legal entity, including an individual corporation, partnership, association and any officer, agent, or employee thereof.

6. Under 40 C.F.R. § 82.152, an “appliance” is any device which contains and uses a class I or II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, MVAC, refrigerator, chiller or freezer.

7. Under 40 C.F.R. § 82.152, an “MVAC” is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. Part 82, Subpart B. Subpart B, at 40 C.F.R. § 82.32(d), defines an MVAC as “mechanical vapor compression refrigeration equipment used to cool the driver’s or passenger’s compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

8. Under 40 C.F.R. § 82.152, an “MVAC-like appliance” is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver’s or passenger’s compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

9. Under 40 C.F.R. § 82.152, a “small appliance” is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal

air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

10. Pursuant to 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

- (1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or,
- (2) Verify, using a signed statement or contract, that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

11. Under 40 C.F.R. § 82.152, “recover” means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

12. Under 40 C.F.R. § 82.152, “class I substance” is a reference to an ozone-depleting substance that is listed in 40 CFR Part 82, Subpart A, Appendix B.

13. Under 40 C.F.R. § 82.152, “class II substance” is a reference to an ozone-depleting substance that is listed in 40 CFR Part 82, Subpart A, Appendix B.

14. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant in replacement of a class I or II ozone-depleting substance. Examples include, but are not limited to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide and blends thereof. As used in 40 C.F.R. Part 82, Subpart F, the term “exempt substitutes” refers to certain

substitutes when used in certain end-uses are specified in 40 C.F.R. § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refer to all other substitutes and end-uses not so specified in § 82.154(a)(1).

15. Under 40 C.F.R. § 82.152, “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

16. Pursuant to 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

17. Under 40 C.F.R. § 82.155(a), persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must evacuate refrigerant to the levels in § 82.156(b) through (d) using recovery equipment that meets the standards in § 82.158(e) through (g), or 40 C.F.R. 82 Subpart B, as applicable.

18. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

19. Pursuant to 40 C.F.R. § 82.155(b)(2)(iii), if all of the refrigerant has leaked out of a small appliance, MVAC, or MVAC-like appliance, the final processor must obtain a signed

statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. For refrigerant to have been considered to have “leaked out,” refrigerant must have escaped because of system failures, accidents, or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

20. Pursuant to 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

21. The Administrator of EPA (the Administrator) may require any person who owns or operates an emission source who is subject to any requirement of the CAA to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

Findings

22. KB Trading, Inc. is a corporation registered with the Ohio Secretary of State with the d/b/a name of Berea Metals & Recycling.

23. KB Trading, Inc. owns and operates a scrap recycling facility located at 5201 West 164th Street, Brook Park, Ohio (Brook Park Facility).

24. Butternut Auto and Recycling Inc. (Butternut) is a corporation registered with the Ohio Secretary of State.

25. Butternut owns and operates a scrap recycling facility located at 40346 Butternut Ridge Road, Elyria, Ohio (Elyria Facility).

26. The corporations which own and operate the Brook Park Facility and Elyria Facility (collectively, “the Facilities”) are controlled by the same individual.

27. KB Trading, Inc. and Butternut are each a “person” within the meaning of 40 C.F.R. § 82.152.

28. At the Facilities, you accept for recycling and disposal small appliances and/or MVACs that contain or once contained ozone depleting substances or substitutes.

29. The ozone depleting substances or substitutes in the small appliances and/or MVACs you accept for recycling are “refrigerants” within the meaning of 40 C.F.R. § 82.152.

30. Your recycling of small appliances and/or MVACs constitutes “disposal,” within the meaning of that term as prescribed at 40 C.F.R. § 82.152.

31. As persons that dispose of small appliances and/or MVACs that contain refrigerant, you are subject to Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F.

32. As persons that are subject to requirements of 42 U.S.C. § 7671g, you are subject to the requirements of Section 114(a)(1).

33. The Facilities are each a final processor in the disposal process for vehicles and appliances, including small appliances and MVACs, within the meaning of 40 C.F.R. § 82.155(b).

34. EPA conducted an unannounced inspection of the Brook Park Facility on June 13, 2019.

35. At the time of the inspection, the Brook Park Facility representative stated that the Facility did not recover refrigerant from small appliances.

36. At the time of the inspection, the Brook Park Facility lacked the proper equipment to recover refrigerant from small appliances.

37. At the time of the inspection, the Brook Park Facility representatives stated that it does not require suppliers to sign a contract prior to acceptance of small appliances and MVACs.

38. At the time of the inspection, the Brook Park Facility representatives stated that it does not have a verification statement for suppliers to verify that refrigerants have been recovered prior to delivery to the Facility.

39. At the time of the inspection, EPA inspectors observed small appliances on a pile of metal to be recycled at the Facility. These small appliances had no evidence of proper refrigerant recovery.

40. By failing to recover refrigerants from appliances during scrap recycling in accordance with 40 C.F.R. §§ 82.155(a) and 82.155(b), or to verify that refrigerants had been recovered in accordance with by using a signed statement or contract, and/or failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(b)(2), at its Brook Park Facility, KB Trading, Inc. violated 40 C.F.R. § 82.155(b).

41. At the time of inspection, KB Trading, Inc. did not have any signage, or other equivalent means at the Brook Park Facility, to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to delivery of the appliance.

42. By failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the item(s) to its Brook Park Facility, KB Trading violated 40 C.F.R. § 82.155(b)(2)(ii).

43. You have agreed to implement a program to recover refrigerant, notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a), and verify proper refrigerant recovery for small appliances, MVACs and MVAC-like appliances at both of your Facilities.

Compliance Program

44. By the effective date of this Order, you must achieve, demonstrate and maintain compliance with 40 C.F.R. Part 82, Subpart F at both of your Facilities, including, but not limited to, the requirements in paragraphs 45 – 50 for any small appliance, MVAC, or MVAC-like appliance that you receive at the Facilities. You must also take the actions in paragraphs 51 – 59 by the dates specified in each paragraph.

45. You may only accept small appliances, MVACs, or MVAC-like appliances with intact refrigerant lines provided you use refrigerant recovery equipment to recover any remaining refrigerant in accordance with § 82.155(a).

46. You must have the refrigerant recovered by a properly trained individual. If that individual is an employee of you, you will ensure that the individual is properly trained to use the refrigerant recovery equipment.

47. You must ensure that recovered refrigerant is sent to an EPA-certified entity for destruction or reclamation.

48. You must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines if you know or have reason to know that the refrigerant has not been properly recovered in accordance with 40 C.F.R. § 82.155(a).

49. You must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines unless it can be verified, using a signed verification statement

that meets the requirements of 40 C.F.R. § 82.155(b)(2) and matches the verification statements included as Attachment 1-2 to this Order, that the refrigerant was properly recovered. For suppliers with whom you have had a long-standing business relationship, this requirement may be satisfied by you entering into a contract that meets the requirements of 40 C.F.R.

§ 82.155(b)(2) and matches the contracts included as Attachment 3-4 to this Order.

50. You must keep a copy of all signed verification statements or contracts obtained as a result of the requirement to comply with 40 C.F.R. § 82.155(b)(2) for three years in accordance with 40 C.F.R. § 82.155(c). Copies of these documents must be maintained at the Facilities and may be maintained in hard copy or electronic format.

51. Within 10 days of the effective date of this Order, you must notify suppliers in writing that you will not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines, unless it can be verified that the refrigerant was properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to dismantling the refrigerant lines using the verification statements included as Attachments 1-2 to this Order or the contracts included as Attachment 3-4 to this Order. The form of this notification may be signs, letters to suppliers, or other equivalent means which ensures notification is given prior to an appliance arriving at the Facilities.

52. Not later than 10 days after the effective date of this Order, you must ensure that the Facilities' websites properly reflect whether and under what circumstances the Facilities are able to accept small appliances, MVACs, or MVAC-like appliances, in accordance with Subpart F.

53. Beginning on the effective date of this Order, you must document the number of small appliances, MVACs, or MVAC-like appliances you reject at each Facility, the date the

small appliance, MVAC, or MVAC-like appliance was rejected, and the reason for rejecting the item(s). You must keep a record of this documentation.

54. Beginning on the effective date of this Order, you must retain copies of receipts for all refrigerant you collect and send to another company for reclamation or destruction.

55. Beginning on the effective date of this Order, you must keep a log of every small appliance, MVAC, or MVAC-like appliance accepted for recycling at each Facility where it was determined that the item's refrigerant "leaked out" in accordance with 40 C.F.R.

§ 82.155(b)(2)(iii). This log must state specifically how it was determined upon visual inspection of the item that the refrigerant leaked out of the small appliance, MVAC, or MVAC-like appliance according to the meaning of "leaked out" in 40 C.F.R. § 82.155(b)(2)(iii). A statement from the supplier that the refrigerant leaked out, without an accompanying visual inspection of the item to confirm the supplier's statement is not a sufficient determination.

56. Not later than 90 days after the effective date of this Order, you must develop, and each Facility must follow, a written refrigerant management plan that incorporates the provisions of paragraphs 45-55. You must provide training on the refrigerant management plan to all employees, and must make the plan available to employees and contractors that play any role with the contracting, purchasing, accepting, handling, or processing of small appliances, MVACs, or MVAC-like appliances at either of your Facilities.

57. Within 90 days of the effective date of this Order, you must provide EPA with the following for each Facility:

- a. Documentation that you purchased refrigerant recovery equipment and have an individual trained in recovering refrigerant or has contracted the services of an individual qualified to perform refrigerant recovery, pursuant to paragraphs 46-47;

- b. Proof of your compliance with the requirements of paragraph 51; and,
- c. A copy of your written refrigerant management plan(s) required by paragraph 56.

58. After six months, one year, 18 months, and two years after the effective date of this Order, you must submit the following to EPA for each Facility, under section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1) for each Facility:

- a. Any completed verification statements and contracts used pursuant to paragraph 49; and
- b. A copy of the records required to be kept by paragraphs 53-55.

59. You must send all reports required by this Order by electronic mail to r5aireinforcement@epa.gov. If you are unable to send a report to these addresses due to email size restrictions or other problems, use these email addresses to make additional arrangements for transmission of the report.

General Provisions

60. You consent to the transmission of this Order by e-mail at the following e-mail address(es): ianjames01@aol.com.

61. This Order does not affect your responsibility to comply with other federal, state, and local laws.

62. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

63. Failure to comply with this Order may subject you to penalties of up to \$101,439 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

64. The terms of this Order that apply to KB Trading, Inc. are binding on KB Trading, Inc. and its assignees and successors. KB Trading, Inc. must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

65. The terms of this Order that apply to Butternut are binding on Butternut and its assignees and successors. Butternut must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

66. You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

67. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

68. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

69. You agree to the terms of this Order. You waive any remedies, claims for relief, and otherwise available rights to judicial or administrative review that you may have with respect

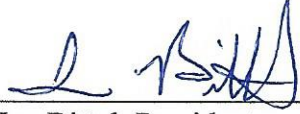
to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

70. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. Except as otherwise provided in this Order, this Order will terminate two years from the effective date, provided that you have complied with all terms of the Order throughout its duration.

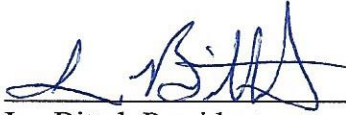
In the matter of: KB Trading, Inc. and Butternut Auto and Recycling, Inc.

For Respondents

9/18/20
Date


Ian Bittel, President
KB Trading, Inc.

9/18/20
Date


Ian Bittel, President
Butternut Auto and Recycling Inc.

In the matter of: KB Trading, Inc. and Butternut Auto and Recycling, Inc.

For United States Environmental Protection Agency

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5